

# **EXHIBIT 3**

## **PART II**

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1 one that is used by the majority of advertising  
2 agencies, and it is very well respected and  
3 accredited, and I can't get into all of their actual  
4 minutiae of how they conduct those.

5 Q. But you rely on what they -- the information  
6 they give to you?

7 A. Absolutely.

8 Q. Are you familiar with the product Zoladex?

9 A. I'm not.

10 Q. Do you have any idea what it's used for?

11 A. I did, but I'd have to look it up. There  
12 were quite a few drugs, 17 drugs as I recall. I'd  
13 have to go look at it again.

14 Q. If you look at your declaration, one of the  
15 attachments to it, I think, has the list of drugs.  
16 If you could find that, that would be helpful.

17 A. Yes, it would be helpful to me, too. Yes.

18 Q. Do you have anything on Zoladex there?

19 A. Yes, I do. Exhibit Kinsella 002.

20 Q. And Zoladex is a drug manufactured by my  
21 client, AstraZeneca; is that right?

22 A. Yes, that's correct.

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1 Q. Did you do anything or did your firm do  
2 anything to research the user profile and  
3 demographic of Zoladex users?

4 A. I did not.

5 Q. You did not look at any particular materials  
6 as to whom that drug is prescribed?

7 A. I didn't -- I did not look at the  
8 demographics through MRI. There was only one of the  
9 17 drugs that was measured by MRI.

10 Q. Okay. So you didn't go outside and do any  
11 research to figure out the typical age, gender,  
12 geographic location, any other demographic for  
13 Zoladex users?

14 A. The research was done by my staff that  
15 indicated that the treatment was for prostate,  
16 breast cancer and endometriosis, and what that tells  
17 me is that you have a breadth of potential age  
18 demographics here, you have two gender demographics  
19 here, that these are not necessarily drugs that  
20 affect a particular income level, particular  
21 household income level, et cetera.

22 And so first of all, I didn't have it

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1 available in MRI, but I did look at each of these.  
2 I don't remember much about them today, but I did  
3 look at these. I knew a lot of them were cancer  
4 drugs, et cetera, which is why we ended up  
5 looking -- because I was not able to measure against  
6 individual drugs, that's why I chose the Medicare  
7 Part B.

8 Q. Your testimony is that there's no sources  
9 available to identify specific target audiences for  
10 particular drugs?

11 A. No, I'm not saying that, but I need to be  
12 able to have a measurable target available to me to  
13 be able to opine to the court that I'm reaching that  
14 target.

15 Q. And you can't -- sitting here today, you  
16 can't tell me what the target audience is in terms  
17 of age or gender for members of Class 1 who were  
18 prescribed Zoladex; is that right?

19 A. Based on some of the other work that I've  
20 done previously and what I have read in some of the  
21 work that I did in a number of the cases, I know  
22 that breast cancer and prostate cancer are likely to

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1 (Exhibit Kinsella 005 marked for  
2 identification)

3 Q. Are you familiar with that e-mail and the  
4 attached drug list?

5 A. I haven't reviewed it recently, but it goes  
6 back to February 14th. This is from Tim McHugh.

7 Q. And that exhibit lists the various drugs and  
8 it actually has a column called "User Profile," do  
9 you see that?

10 A. Yes, I do.

11 Q. And do you see for Zoladex it says the user  
12 profile is women?

13 A. Right.

14 Q. Do you believe that to be true?

15 A. No.

16 Q. You don't believe that to be true?

17 A. No. This is work product that was done in  
18 February.

19 Q. Okay. And is there anything that you recall  
20 will give you more updated information on the user  
21 profile for Zoladex?

22 A. The ones that we attached to our documents,

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1 our -- the one I just looked at, Exhibit Kinsella  
2 002, was certainly an updated -- this was the very  
3 first iteration that was done by my office.

4 Q. Well, what I'm trying to distinguish is, the  
5 indications on the e-mail I just showed you for  
6 Zoladex are the same indications that you mentioned  
7 that are attached to your final affidavit, namely  
8 breast cancer, prostate cancer, and endometriosis.  
9 Those haven't changed.

10 A. No, they haven't.

11 Q. But the user profile listed on this document  
12 for Zoladex is women, and my question to you is,  
13 what is the basis for that conclusion, that the user  
14 profile for Zoladex is women?

15 A. This was not my conclusion. This was a  
16 document prepared by a staff member, and as you --  
17 it was updated with more information. This is one  
18 of the first cuts that we did on any work for this.  
19 This is not a final document and was not necessarily  
20 one upon which I relied.

21 Q. But you don't have a basis to tell me, as  
22 you testified before, whether it's true or not that

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1 the user profile for Zoladex is women as opposed to  
2 men?

3 A. I don't.

4 Q. And that is not important to your notice  
5 program in this case, is that what you testified?

6 A. Let me take my answer back. Just that I --  
7 if you're saying that I can't tell you whether women  
8 take Zoladex more than men take Zoladex, I can't  
9 tell you that, but I can tell you that I know that  
10 men have prostate cancer and women have breast  
11 cancer. That I do know.

12 Q. But you have no basis and you've done no  
13 research to quantify the percentages of uses of  
14 Zoladex as between men and women?

15 MR. NOTARGIACOMO: Objection, asked and  
16 answered. Go ahead.

17 A. I have to reach both of them. It doesn't  
18 matter to me.

19 Q. If you can just answer my question.

20 A. Okay.

21 Q. You have done no research to determine the  
22 relative proportions over this class period of

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1 whether members of Class 1 who took Zoladex are  
2 predominantly men or predominantly women?

3 A. I have not done that research, and it's not  
4 material because I have to reach them both.

5 Q. Just so we're clear, for none of the drugs  
6 of any of the defendants in this case have you  
7 undertaken any research to determine the specific  
8 demographic targets for particular drugs?

9 A. That's correct.

10 Q. Are you aware that this case against my  
11 client, AstraZeneca, is being tried as a separate  
12 trial against AstraZeneca?

13 A. Yes, I'm aware of that.

14 Q. Are you of the view that what happens at the  
15 trial of another defendant, B-MS or J&J, has any  
16 impact on what happens to the class against my  
17 client?

18 A. In terms of the notice, I'm charged with  
19 giving effective notice to the class members. I'm  
20 assuming that there will be class members who are  
21 taking different kinds of drugs. One class member  
22 can be taking more of one of these drugs and have

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1       A. It's a chart that looks at the Medicare --  
2       demographics of Medicare recipients and also the  
3       branded/generic drug users, and it looks at it by  
4       various categories of gender, age, education,  
5       household income, ethnicity and location.

6       Q. Okay. And for gender, your research has  
7       indicated that 57.2 percent of Medicare recipients  
8       are female as opposed to male; is that right?

9       A. That's correct.

10       Q. And that 59.2 percent of branded/generic  
11       drug users are females as opposed to males; is that  
12       right?

13       A. That's correct.

14       Q. And those determinations as to that  
15       demographic breakdown in part drives your notice  
16       program and the media you select; is that right?

17       A. Repeat that one more time.

18       Q. The demographics here, male versus female,  
19       not to the exclusion of all others, but the male  
20       versus female breakdown here is important to you in  
21       some way in selecting the media that is used for the  
22       publication notice in this matter, right?

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1           A. Actually, both of these targets skew  
2 slightly female. Because we can measure how well  
3 we're doing against these two targets, I don't  
4 necessarily run a -- I don't do an MRI run against  
5 women only or against men only. I use this for  
6 direction.

7           And if you look on Page 14, the reason  
8 I'm doing this is to look at how these two targets  
9 might differ from each other so that I can make sure  
10 that I'm choosing media that would effectively reach  
11 both targets, and I cull out what I see as the  
12 differences.

13           I'm not -- I don't sit there and say,  
14 This skews mostly female; therefore, I'm only going  
15 to use Better Homes & Gardens, and I'm not going to  
16 use Parade magazine or I'm not going to use Sports  
17 Illustrated.

18           Because the media that I have selected  
19 or that we oftentimes find useful in these programs  
20 are media with the largest circulations in  
21 readership in the country, you're reaching a very  
22 significant number of both men and women. Unless it

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1 is a particular one that skews only to females,  
2 sometimes we put a more -- one that skews a little  
3 more female in our program.

4                   In this particular instance we chose to  
5 put Jet and Selecciones in there. We can't measure  
6 Selecciones, but we put it in there because we  
7 wanted to have some Hispanic coverage even though  
8 those people who read Jet and Selecciones read the  
9 other papers.

10                  So it's not driven by this. These are  
11 guidelines and a direction for us.

12                  Q. But it does have some impact, as you  
13 described?

14                  A. We always measure. We always measure the  
15 target; and, therefore, that's subsumed into that  
16 measurement.

17                  Q. Now, if you look on Page 18 to 20 of your  
18 same template, I notice you selected, at least in  
19 part, some magazines that do have heavy female  
20 readership; Better Homes & Gardens, for instance.  
21 Do you have information as to what the profile is of  
22 users of Better Homes & Gardens?

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1 A. Yes, but I don't have it with me.

2 Q. And People, I think you actually list on  
3 Page 20, approximately 71 percent of People readers  
4 are female.

5 A. Yes.

6 Q. And the 71 are age 18 to 49?

7 A. That's correct.

8 Q. Is that right?

9 The 18 to 49 aspect of that, that would  
10 mean that the overwhelming majority of people -- of  
11 persons who read People would not be part of a  
12 Medicare target; is that right?

13 A. That's correct.

14 Q. Okay. Reader's Digest, 61 percent women  
15 readers?

16 A. Correct.

17 Q. Now, we're going back to Page 14, I guess.  
18 I'm sorry, 13, sorry. Your research indicates that  
19 roughly 42 percent of Medicare recipients are male;  
20 is that right?

21 A. Roughly, yes.

22 Q. And elsewhere in these papers you indicate

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1 that your publication program will reach 83.1  
2 percent of Medicare recipients prior to the  
3 AstraZeneca trial beginning --

4 A. Correct.

5 Q. -- is that right?

6 A. 83.1 of Medicare.

7 Q. Do you know how many -- what percentage of  
8 male Medicare recipients your notice program will  
9 reach?

10 A. I don't, but I could calculate that.

11 Q. Would it be -- would it just be 42 times 83  
12 percent. Is that how you get that number? 42  
13 percent are male, it's a reach of 83, you multiply  
14 those?

15 A. No. No, because you would look at the --  
16 you would have to do a calculation based on each  
17 publication. I mean, this -- as you went through  
18 these publications, you could see that they were  
19 selected or you could assume that it could be seen  
20 that they were selected for different reasons to  
21 balance the reach of the two targets. And in some  
22 of these instances, like National Geo, it skews

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1 male. Reader's Digest and People skew female. And  
2 so against that target you are looking at it, but we  
3 could do a run that would look at the gender.

4 Q. And you haven't done that?

5 A. No, because my target was Medicare  
6 recipients.

7 Q. And the reason you selected, as you say, a  
8 balance of some magazines that skew male, some that  
9 skew women, is because you've decided that your  
10 target audience includes all Medicare Part B  
11 recipients and all branded/generic drug users,  
12 right? You're covering a broad spectrum?

13 A. I would find the class members within those  
14 two targets.

15 Q. And if you were doing a class target  
16 specifically for Zoladex, you wouldn't approach it  
17 that way, would you?

18 A. If it was Medicare Part B?

19 Q. If this was just a class action, my client  
20 was the only defendant, it was one drug, you  
21 wouldn't necessarily try to find balances of targets  
22 that didn't meet the user profile of Zoladex, would

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1 you?

2 A. Are you saying there is no Medicare Part B  
3 at all identification with the hypothetical  
4 situation?

5 Q. Well, tell it to me both ways. If there  
6 were -- why don't we take that first. A solely  
7 Medicare Part B case against my client, AstraZeneca,  
8 with respect to Zoladex.

9 A. If I were doing no Medicare Part B, I would  
10 look at the demographics and probably choose --  
11 because I can't measure Zoladex, I would choose a  
12 demographic that represented that.

13 In this case, based on what I have --  
14 you know, the description of the drug and its usage,  
15 I would likely have several targets.

16 Q. And that is because -- but you don't have  
17 any basis for that because if, for example, the  
18 overwhelming 90 percent of the users were a  
19 particular gender, you wouldn't necessarily want to  
20 deal with the gender that's not part of that target,  
21 would you?

22 A. Well, I think if I picked only male-only

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1 publications, I would open myself up to making a  
2 decision that women should not receive notice, so I  
3 would be looking at, you know, a broader group of  
4 publications, and I would measure it.

5 Q. But you would want a balance.

6 A. But I --

7 Q. You would want to balance it as against the  
8 actual user profile?

9 A. Yes, I would.

10 Q. And the reason that all of these magazines  
11 that are listed in your first exhibit are in there  
12 is because you're trying to reach not just Zoladex  
13 users, you're trying to reach users of a number of  
14 other products; is that right?

15 A. I'm reaching people whose demographics are  
16 very similar because they're Medicare, and they're  
17 certainly -- their ages -- for the most part, their  
18 ages are going to be very similar. They're either  
19 one of two genders, and we can see by these  
20 demographics that there's a mix of male and female.  
21 I could look very specifically at that, but I think  
22 by the time I finished looking at it it would be

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1 very close to what I developed here.

2 Q. But you don't have any basis for that, do  
3 you?

4 A. No, but I could do that.

5 Q. I think you said before in your answer you  
6 couldn't figure out what the Zoladex user profile  
7 is. What's your basis for that statement?

8 A. That I couldn't figure out...?

9 Q. You couldn't figure out a specific user  
10 profile for Zoladex. I think you may have mentioned  
11 that in one of your answers. You don't have any  
12 basis for that answer, do you?

13 MR. NOTARGIACOMO: Objection.

14 A. I think I should have my answer read back.

15 Q. I think it was in the context -- we can --  
16 do you have any basis for concluding that you can't  
17 determine a user profile for the specific drug  
18 Zoladex?

19 MR. NOTARGIACOMO: Objection.

20 A. Would you repeat that one more time.

21 Q. Do you have any basis for concluding that it  
22 is not possible to develop a specific user profile

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1 for the drug Zoladex?

2 A. No, I do not.

3 Q. So let's go back, 42 percent are male of  
4 your target audience. 57 percent are women. Your  
5 program in your view will reach 83 percent of  
6 Medicare recipients, so is it fair to say that it  
7 will reach some lower portion of male Medicare  
8 recipients?

9 A. It will reach -- it will reach 83 percent  
10 of -- I can't say that. I'd have to look at that.

11 Q. But you haven't done that yet?

12 A. No, I haven't done that yet.

13 Q. Okay. Same question for the branded/generic  
14 drug users. The breakout you have here is 59  
15 percent are female and 40 percent are male. Can  
16 you -- you estimate a reach of 81.6 percent to that  
17 target audience in your papers.

18 A. That's correct.

19 Q. Can you tell me what the reach would be for  
20 male generic/branded drug users?

21 A. Not from here. Not from here. But I could  
22 tell that. I think when you -- particularly you're

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1 reaching a level of 83 percent of a particular  
2 target, that's a significant amount. It would be  
3 very hard to reach 83 percent if all of a sudden  
4 you're only reaching 20 percent of the men in that  
5 target versus 90 percent of the women in that  
6 target. Your results would be extremely different.

7 Q. But you haven't done that work to  
8 determine -- you haven't made any representations to  
9 the court as to the reach for male Medicare users or  
10 the reach for male branded/generic users?

11 A. I have not, but I believe it would be  
12 proportional to this.

13 Q. And by "proportional," you mean what?

14 A. I don't think we would be reaching more  
15 women than is proportional to this target than we'd  
16 be reaching men.

17 Q. But you haven't done the work to determine  
18 that?

19 A. No.

20 Q. Okay.

21 MR. NOTARGIACOMO: When you get to a  
22 good stopping point.

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1 MR. FLYNN: Yes, sure, whenever you want  
2 to take a break is fine. Do you want to take one  
3 now?

4 MR. NOTARGIACOMO: Sure.

5 MR. FLYNN: How long do you want?

6 MR. NOTARGIACOMO: Ten minutes.

7 MR. FLYNN: Sure.

8 (Recess taken)

9 BY MR. FLYNN:

10 Q. Ms. Kinsella, we talked a little bit before  
11 about the lack of TV and radio as part of your  
12 notice here, and am I correct that the lack of that  
13 is a reflection of your view that you do not need  
14 that type of media to reach Medicare recipients in  
15 this case?

16 A. It's my view that I was effectively reaching  
17 them through the print program.

18 Q. Are you familiar with research that  
19 concludes that Medicare recipients are  
20 overwhelmingly female, low income with low education  
21 levels?

22 A. I know that -- actually, no. I have some

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1 moderate magazine readers, et cetera. This  
2 information provided direction to the media  
3 selections and ensured that the media used actually  
4 reached the target audience." Do you see that?

5 A. I do.

6 Q. That's a correct statement of how you go  
7 about determining what media to use, right?

8 A. It provides direction. It doesn't provide  
9 your choices.

10 Q. And the last sentence says, "It is unlikely  
11 that the target audience would see a summary notice,  
12 for example, if placed in 200 newspapers nationwide  
13 when the Settlement Group is composed of low-  
14 education, low-income consumers who are not  
15 newspaper readers," correct?

16 A. Where is that? I'm sorry?

17 Q. It's the last sentence of Page 4, carryover  
18 to 5.

19 A. Yes. In newspapers, yes, that is correct.

20 Q. And magazines are different than newspapers?

21 A. And newspaper supplements are different than  
22 newspapers.

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1 Q. And so did you do research in this case, our  
2 case, to determine whether or not the Medicare  
3 population were heavy users of TV as opposed to  
4 heavy users of other forms of media?

5 A. I think there are some quintile reports in  
6 here, I believe.

7 Q. What did you conclude?

8 A. I'd have to go back and look at that again.

9 Q. If you would, please.

10 A. But let me just make a statement, if I could  
11 here. And I don't want to interrupt your line of  
12 questioning, but the -- there are a number of ways  
13 you can reach people. You have people who are light  
14 users of newspapers or heavy users of TV or vice  
15 versa. The regions that I have against our target  
16 audience are calculated specifically against a  
17 demographic of Medicare people, and it is an  
18 estimated 83.1 percent reach. Even if they are  
19 heavy television viewers, I could not get to 83 if  
20 they were only heavy television viewers. I have the  
21 data and the survey material that supports those  
22 runs and those reach figures.

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1 Q. But in this Mylan case you concluded that  
2 the Medicare population were heavy TV users, and you  
3 tailored your program to use TV because of that; is  
4 that right?

5 A. I tailored mine for several reasons. Number  
6 one, this was a settlement notice. This was a  
7 settlement notice in which the attorneys general  
8 that I was working with, the antitrust divisions of  
9 the states that were involved, wanted to ensure as  
10 many claims as they possibly could get. That is not  
11 what my focus is in here in the settlement.

12 My focus is to provide due process  
13 notice of someone's rights in a litigation. Then  
14 they will have an opportunity to take another action  
15 in terms of filing a claim if, in fact, there's a  
16 settlement or the court rules in favor of the  
17 plaintiffs.

18 Q. So your testimony is that in the Mylan case,  
19 you developed a publication notice program that went  
20 above and beyond the call?

21 A. Yes. When you have reaches, as I'm looking  
22 at here -- it has been a while since I've looked at

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1 sense with you, if the plaintiffs' position is that  
2 the notices they sent us earlier this week are the  
3 operative notices, we'll look at those, as opposed  
4 to the ones attached to Ms. Kinsella's declaration.  
5 Is that fair?

6 MR. NOTARGIACOMO: I have no problem  
7 with that. Just for the record, those were sent to  
8 defendants to give them an opportunity -- to give  
9 plaintiffs and defendants an opportunity to try to  
10 come to -- as the court instructed us, to try to  
11 come to some sort of common ground on the language  
12 of those notices before we submit something to the  
13 court.

14 MR. FLYNN: Right, and they were sent,  
15 just for the record, I think Monday or Tuesday of  
16 this week.

17 Q. And you have before you Exhibit Kinsella 003.  
18 It's Exhibit Kinsella 002, I'm sorry. It's Exhibit  
19 Kinsella 002.

20 I'd like to turn --

21 MR. TRETTER: Can we go off the record  
22 for a second?

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1 (Pause)

2 Q. One question before we -- one topic area  
3 before we head to those particular notices. Are you  
4 aware that members of Class 1 include not just  
5 Medicare recipients with respect to the various  
6 drugs listed, but also heirs and survivors of those  
7 recipients?

8 A. I am now aware of that.

9 Q. And is it accurate to say that nothing in  
10 your publication notice program was developed in any  
11 way to target such heirs or executors of those  
12 Medicare recipients?

13 A. That is correct. I developed these notices,  
14 except for the minor changes that were just done,  
15 without that knowledge.

16 Q. Okay. And I take it that consistent with  
17 that, you did not undertake any research to try to  
18 determine, with respect to Zoladex users, whether or  
19 what proportion of class members fall into the  
20 category of living persons as opposed to executors  
21 and heirs?

22 A. I did not.

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1 Q. Did you do any work to determine the  
2 mortality rate of men with advanced prostate cancer  
3 during the class period?

4 A. No, I did not.

5 Q. So you can't tell us anything about the  
6 reach of your publication notice on members of Class  
7 1 who happen to be heirs of Zoladex users or  
8 executors of Zoladex users?

9 A. I didn't do any specific runs, but I can  
10 tell you that the publications that were selected  
11 here are the most broadly circulated publications in  
12 the country and have the highest reach against  
13 almost all targets, including adults 18-plus.

14 Q. But, again, no -- you're not giving any  
15 opinions about the reach with respect to the portion  
16 of Class 1 that are heirs? And, in fact, you didn't  
17 even know when you undertook your program that a  
18 portion of Class 1 could be heirs and executors,  
19 right?

20 A. I know for a fact that the publications I've  
21 selected, I've chosen to measure those against the  
22 targets in this case that I chose, but I also know,